



Entered on Docket
March 26, 2007

A handwritten signature in black ink, appearing to read "Linda Riegle".

Hon. Linda B. Riegle
United States Bankruptcy Judge

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Designated NV counsel for Estate of Tabas

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

Chapter 11

USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,
Debtor.

ORDER ON ESTATE OF DANIEL TABAS' AND FERTITTA ENTERPRISES, INC.'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO TERMINATE THE LOAN SERVICING AGREEMENT FOR THE DIRECT LOAN TO COLT GATEWAY LLC

USA CAPITAL FIRST TRUST DEED FUND, LLC,
Debtor.

USA SECURITIES, LLC,
Debtor.

Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

Hearing Date: 2/15/07
Hearing Time: 9:30 a.m.

Fertitta Enterprises, Inc., and Estate of Tabas, by and through their attorneys, on January,

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1 17, 2007, filed their motion to obtain relief from the automatic stay, pursuant to Fed. R. Bankr. P.
 2 9013 and 11 U.S.C. § 362(d) ("Motion"), in order to terminate the loan servicing agreement for
 3 the Colt Gateway Loan (Ct. Dkt. #2457), and supported by the declaration of William J. Bullard
 4 (Ct. Dkt. #2459). On February 5, 2007, Debtors USA Commercial Mortgage Company
 5 ("USACM") and USA Capital Diversified Trust Deed Fund ("Diversified"), LLC filed an
 6 opposition (Ct. Dkt. #2696), supported by the declaration of Thomas J. Allison (Ct. Dkt. #2697).
 7 On February 7, 2007, the Official Committee of Unsecured Creditors for USA Commercial
 8 Mortgage Company joined the opposition (Ct. Dkt. #2706). On February 12, 2007, movants filed
 9 their reply (Ct. Dkt. #2742), supported by the declaration of Janet L. Chubb (Ct. Dkt. #2743).

10 On February 15, 2007, this Court held a hearing on the Motion, with appearances and
 11 arguments by counsel for the movants, debtors, and official creditors committees. The Court
 12 having considered the pleadings and papers on file and the arguments of counsel, and good cause
 13 appearing,

14 **IT IS HEREBY ORDERED** that the hearing on the Motion is continued to 9:30 a.m. on
 15 March 1, 2007, at which time the Court will conduct a status hearing; and

16 **IT IS FURTHER ORDERED** that on or before February 27, 2007, USACM shall file a
 17 motion for approval of a settlement with borrower on the Colt Gateway loan and seek instructions
 18 regarding the distribution of the settlement funds, or commence foreclosure proceedings with
 19 respect to such loan; and

20 **IT IS FURTHER ORDERED** that if USACM has satisfied neither of the Conditions on
 21 or before February 27, 2007, then on February 28, 2007, the automatic stay shall be terminated to
 22 without further order of the Court, and Fertitta Enterprises, Inc., the Estate of Tabas, and
 23 Diversified may proceed with their remedies regarding servicing and/or collection of the Colt
 24 Gateway loan; and

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1 **IT IS FURTHER ORDERED** that if either of the Conditions is satisfied on or before
2 February 27, 2007, then the Court will conduct an evidentiary hearing on the Motion at 9:30 a.m.
3 on March 15, 2007.

4 Prepared and Submitted by:

5 JONES VARGAS

6 By: //s// Louis M. Bubala III
7 LOUIS M. BUBALA III
8 Attorneys for Fertitta Enterprises, Inc. &
Designated NV Counsel for Estate of Tabas

9 APPROVED/DISAPPROVED:

10 RAY QUINNEY & NEBEKER, P.C.

11 ANNETTE W. JARVIS
12 Counsel for Debtors

13 APPROVED/DISAPPROVED:

14 ORRICK HERRINGTON & SUTCLIFFE LLP

15 MARC A. LEVINSON

16 Counsel for Official Committee of Equity
17 Security Holders of USA Capital Diversified
Trust Deed Fund, LLC

18 APPROVED/DISAPPROVED:

19 STUTMAN, TREISTER & GLATT

21 FRANK MEROLA
22 CHRISTINE PAJAK

23 Counsel for Official Committee of Equity
Security Holders of USA Capital First
Trust Deed Fund, LLC

24 ALTERNATIVE METHOD re Rule 9021:

25 ____ The court has waived the requirement of approval under LR 9021.

26 ____ No parties appeared or filed written objections, and there is no trustee appointed in
this case.

27 ____ I have delivered a copy of this proposed order to all counsel who appeared at the
hearing, and unrepresented parties who appeared at the hearing, and any trustee appointed

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APPROVED/DISAPPROVED:

OFFICE OF THE U.S. TRUSTEE

____ AUGUST B. LANDIS
Assistant U.S. Trustee

APPROVED/DISAPPROVED:

LEWIS AND ROCA LLP

____ SUSAN M. FREEMAN
ROB CHARLES
Counsel for Official Committee of Unsecured
Creditors for USA Commercial Mortgage
Company

APPROVED/DISAPPROVED:

GORDON & SILVER, LTD.

____ GERALD M. GORDON
GREGORY E. GARMAN
Counsel for Official Committee of Executory
Contract Holders of USA Commercial
Mortgage Company

1 in this case, and each has approved or disapproved the order, or failed to respond, as
 2 indicated below:

3 **Debtors:** Asked that the proposed order be amended to state that USACM has to file a
 4 motion relating to the payoff of the loans (or file a notice of default by February 27) and
 not specify what kind of motion.

5 **Office of the U.S. Trustee:** Agreed with the DTDF's response, to submit a competing
 6 form of the order with DTDF's proposed language should the parties not reach an
 agreement to resolve the Colt Gateway loan.

7 **Official Committee of Equity Security Holders of USA Capital Diversified Trust
 8 Deed Fund, LLC:** In response to the first version of the proposed order served on all
 9 parties on February 16, 2007, this Committee proposed that the second term of the order
 read:

10 **IT IS FURTHER ORDERED** that on or before February 27, 2007,
 11 USACM shall file a motion seeking authority from the Bankruptcy Court in
 12 connection with a payoff proposal from the borrower on the Colt Gateway
 13 loan, or commence foreclosure proceedings with respect to such loan
 14 (collectively, the "Conditions");

15 In response to this proposed order served upon it via email on February 20, 2007, and in
 16 light of ongoing negotiations on the Colt Gateway loan, proposed to submit a competing
 17 form of the order with its proposed language should the parties not reach an agreement to
 18 resolve the Colt Gateway loan. This proposed order incorporates all other changes
 19 requested by this Committee in response to the first version of the proposed order served
 20 on all parties on February 16, 2007.

21 **Official Committee of Unsecured Creditors for USA Commercial Mortgage
 22 Company:** Failed to respond to the proposed order served upon it via email on February
 23 20, 2007. In response to the first version of the proposed order served on all parties on
 24 February 16, 2007, this Committee stated that it did not believe the court required a
 25 settlement by February 27, 2007, but required a motion "with respect to the payoff to get
 26 this dispute before the court and the money coming in." This Committee responded that
 27 the other changes proposed by the DTDF Committee to the first version of the proposed
 28 order are "fine."

29 **Official Committee of Equity Security Holders of USA Capital First Trust Deed
 30 Fund, LLC:** Responded that it did not recall the court's oral order used the term
 31 "settlement" to describe the type of motion it instructed USACM to file.

32 **Official Committee of Executory Contract Holders of USA Commercial Mortgage
 33 Company:** Failed to respond to the proposed order served upon it via email on February
 34 20, 2007, or to a first version of the proposed order served via email on February 16, 2007.

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